



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application Number : 09/767,680 Confirmation No.: 4425
Applicant : Asger GEPPEL et al.
Filed : January 24, 2001
Title : PORPHYRIN CONTAINING LACTIC ACID BACTERIAL
CELLS AND USE THEREOF
TC/Art Unit : 1652
Examiner: : Kathleen M. Kerr

Docket No. : 58982.000010
Customer No. : 21967

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Letter Regarding Substance of the Interview

Sir:

In response to the Personal Interview Summary issued on December 18, 2003, Applicants submit the following "Substance of the Interview," summarizing the personal interview on December 18, 2003 conducted between Stanislaus Aksman, Robert C. Lampe III (hereinafter "Applicants' representatives") and Examiner Kathleen Kerr. Applicants appreciate the courtesy of the personal interview extended to their representatives on December 18, 2003. The following issues were discussed at the interview:

I. The Examiner and Applicants' representatives agreed that claims 53-55 are not drawn to the previously elected invention. As such, these claims are withdrawn from consideration. However, the Examiner noted that upon allowance of claim 13 (from which claims 53-55 depend), it will be possible to argue for rejoinder of claims 53-55 (as a method of making the subject matter of claim 13).

II. The Examiner and Applicants' representatives discussed the rejection of claims 8 and 9 under 35 U.S.C. § 112, 2nd paragraph as allegedly indefinite in the

recitation of the term “about.” Applicants continued to traverse the rejection and reserved their right to provide additional arguments to rebut it.

III. The Examiner and Applicants’ representatives discussed the rejection of claim 34 under 35 U.S.C. § 112, 2nd paragraph as allegedly indefinite in the recitation of “DSM12015” as lacking a proper antecedent basis.

IV. The Examiner stated that she objects to the specification because the Examples demonstrate allegedly inconsistent scientific results. More specifically, the Examiner noted that porphyrin-containing compounds of Example 1 are identified in the cell pellet, while porphyrin-containing compounds of Example 2 are identified in the supernatant. The Examiner contended that these results are inconsistent and confusing. Applicants’ representatives agreed to further consider this specification objection and to communicate with Applicants to resolve the alleged inconsistency. In addition, Applicants’ representatives agreed to discuss whether cytochrome d is a species of porphyrin distinct from hemin with Applicants.

V. The Examiner and Applicants’ representatives discussed the multiple enablement rejections of pending claims 1, 4-17 and 34-52 under 35 U.S.C. § 112, 1st paragraph. With each of the enablement rejections, the Examiner took the position that the full scope of the rejected claims was not enabled by the specification, and that the application enables only the scope of the claimed subject matter described in working Examples 1 and 2. Applicants’ representatives argued that the specification considered in its entirety, and optionally the art at the time of the invention, enables the full scope of the claimed subject matter.

VI. The Examiner and Applicants’ representatives discussed the relevance of the teachings of the Kaneko *et al*/reference (U.S. Patent No. 5,075,226) in the context of the claims rejected under 35 U.S.C. § 103 as allegedly obvious in light of the teachings of Kaneko *et al*. The Examiner took the position that the rejected claims are rendered obvious in light of the teachings of the Kaneko *et al*/reference, and that one of skill in the art would have had a reasonable expectation of achieving the Applicants’ claimed invention by administration of hemin at the concentrations taught by Kaneko *et al*.


Applicants' representatives argued that the Kaneko *et al*/reference does not provide an expectation of achieving the claimed invention. The Examiner suggested that this rejection might be overcome by amending relevant claims.

It is believed that no fee is due in connection with this filing. However, in the event that any fees are necessary, the Commissioner is hereby authorized to charge our Deposit Account No. 50-0206.

Respectfully submitted,

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